

# CITY OF HUNTSVILLE, TEXAS

Jack Olsta, Chair

John Bradley  
Matt Hannes, Vice Chair  
Christina Felder



Dan Phillips  
Joe E. Kirk  
Nate Grigsby

## ZONING BOARD OF ADJUSTMENT AGENDA

FRIDAY, MAY 21, 2010, 12:00 NOON  
CONFERENCE ROOM  
HUNTSVILLE CITY HALL, 1212 AVENUE M

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services are requested to contact the Planning Division, at 936-294-5782 two working days prior to the meeting so that appropriate arrangements can be made.

### REGULAR SESSION [12:00PM]

1. **CALL TO ORDER**
2. **INTRODUCTION** of new member Joe E. Kirk.
3. **PUBLIC HEARING** for the variance request by Image Installations, applicant, subject property located at 563 Interstate 45 South, for a request to encroach into the building setback.
4. **CONSIDER** the variance request by Image Installations, applicant, subject property located at 563 Interstate 45 South, for a request to encroach into the building setback.
5. **PUBLIC HEARING** for the variance request by the City of Huntsville, applicant, subject property located at 1216 14<sup>th</sup> Street (Huntsville Public Library), for a request to plat setbacks less than the minimum requirement and allow for an encroach into the building setback.
6. **CONSIDER** the variance request by the City of Huntsville, applicant, subject property located at 1216 14<sup>th</sup> Street (Huntsville Public Library), for a request to plat setbacks less than the minimum requirement and allow for an encroach into the building setback.
7. **CONSIDER** the minutes from the meeting of January 29, 2010.
8. **ADJOURNMENT**

*If, during the course of the meeting and discussion of any items covered by this notice, the Zoning Board of Adjustment determines that a Closed or Executive session of the Commission is required, then such closed meeting will be held as authorized by Texas Government Code, Chapter 551, Sections: 551.071 – consultation with counsel on legal matters; 551.072 – deliberation regarding purchase, exchange, lease or value of real property; 551.073 – deliberation regarding a prospective gift; 551.074 – personnel matters regarding the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; 551.076 – implementation of security personnel or devices; 551.087 – deliberation regarding economic development negotiation; and/or other matters as authorized under the Texas Government Code.*

*If a Closed or Executive session is held in accordance with the Texas Government Code as set out above, the Zoning Board of Adjustment will reconvene in Open Session in order to take action, if necessary, on the items addressed during Executive Session.*

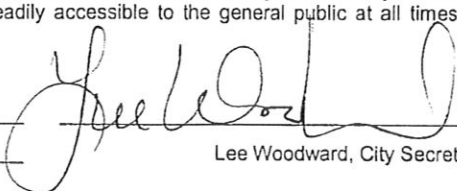
### CERTIFICATE

I, Lee Woodward, City Secretary, do hereby certify that a copy of the May 21, 2010 Zoning Board of Adjustment Agenda was posted on the City Hall bulletin board, a place convenient and readily accessible to the general public at all times, in compliance with Chapter 551, Texas Government Code.

DATE OF POSTING: 5/17/10

TIME OF POSTING: 8:30 am

DATE REMOVED: \_\_\_\_\_

  
Lee Woodward, City Secretary



## ZONING BOARD OF ADJUSTMENT AGENDA ITEM DISCUSSION FORM

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Prepared by: Rose Kader  
Planner

Aron Kulhavy, A.I.C.P.  
Public Works Director/City Planner

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MEETING DATE: May 21, 2010

TYPE OF REVIEW: Setback Encroachment

SUBJECT: 563 I-45 South

REQUESTED BY: Image Installations

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### **FACTS, CODE REQUIREMENTS AND CONDITIONS:**

The applicant will be providing information to the Board at the meeting. Staff has prepared the following report with information available at the time of preparation.

The location of this property is at the northwest corner of Interstate 45 (west feeder road) and FM 1374. The commercial business is currently a Citgo gas station/convenience store. The applicant described their desire to redesign the canopy over the gas pumps that are currently in operation. The anticipated design is to detach the canopy from the building and construct a smaller square footage canopy in its place. Also, the current canopy is stated to be over 20 years old, is deteriorating and needs to be replaced; and, at the same time, the redesign will provide adequate coverage to the public at the gas pumps fronting the feeder road.

In looking at the City's aerial map, staff's photos and the survey provided by the applicant, the current canopy (overhead decking only) is approximately 10 feet from the property line (staff suspects it is where the concrete ends on the bottom photo) along the feeder road. As it stands today, this structure is considered to be grandfather. The applicant states the proposed extension is only to the overhead canopy (foundation footprint to remain the same) and it will be extended an additional five (5) feet. If allowed, staff estimates it to be approximately five (5) feet from the property line.

Table 5-1 of the *Development Code* indicates front setbacks for non-residential lots are a minimum of 25 feet. *Section 501.3 (1) Measurements* states: *The Building Official shall measure setback lines from the property line of the lot to the nearest part of a building or structure.* The *Code* does not address commercial canopies for the maximum allowed overhang as it does for the residential roof eave overhang.

#### **Past Cases:**

Staff found one case similar to this request. See enclosed documents on a 1994 case for Diamond Shamrock gas canopy to encroach into the setbacks at 1328 Sam Houston Avenue (now Smoothie King).

In order to grant this request, the *Development Code* states (Section 104.3.3) that all of the following criteria must be met (*staff comments in regards to each criterion follow in italics*):

- (a) **Special conditions and circumstances exist that are peculiar to the land, structure, or building involved and that are not applicable to other lands, structures, or buildings.**

*There are no special conditions in regards to the property under consideration. This is leased property with an existing and functioning business on a corner lot.*

- (b) **The special conditions and circumstances do not result from the actions of the applicant, nor could the condition or circumstances be corrected or avoided by the applicant.**

*Nothing included with the application or discovered during staff review of the case has indicated that the circumstances cannot be avoided by the applicant.*

- (c) **The relief granted is the minimum degree of relief necessary to make possible the reasonable use of the land, building, or structure according to all other applicable regulations.**

*No, because the structure is existing and there is some protection as currently constructed. The current canopy affords the property owner reasonable use of the property.*

- (d) **Literal interpretation of the provisions of the Code would deprive the applicant of rights commonly enjoyed by other properties under the terms of this Code and would work unnecessary and undue hardship on the applicant.**

*No, staff believes this is a convenience and a cosmetic upgrade, the business can continue to function without the canopy extension.*

- (e) **The grant of the relief will not violate the general intent and purpose of this Code nor policies of the Comprehensive Plan.**

*This statement is correct. One of the main purposes of the Development Code is for the protection of the health, safety, and general welfare of the public. The overhead extension would provide extra shelter to the public for the two exterior gas pumps.*

- (f) **The grant of relief will not create unsafe conditions nor other detriments to the public welfare beyond the effects of development otherwise allowed.**

*In just a general assumption, without review of a site or design plan of the proposed extension, staff is assuming the overhead extension will not create any site triangle or visibility issues at this time.*

#### **STAFF RECOMMENDATION:**

*Because the request does not meet all the requirements necessary for granting a variance, staff recommends denial of the request.*

#### **ATTACHMENTS:**

- Variance Request
- Survey from applicant

- Aerial Map of location/property
- Current photographs of the property



**Applicant Name**

CLETE DODSON (IMAGE INSTALLATIONS)

**Questions**

Please answer the following questions. Attach a separate sheet if additional space is needed.

1. What special conditions and circumstances exist that are peculiar to the land, structure, or building involved and that are not applicable to other lands, structures, or buildings?

The existing canopy is 20<sup>+</sup> years old, and in a state of dangerous deterioration.

2. Are the special conditions and circumstances a result from the actions of the applicant, or could the condition or circumstances be corrected or avoided by the applicant?

NO. The existing structure is deteriorating and needs to be replaced.

3. Is the relief, if granted, the minimum degree of relief necessary to make possible the reasonable use of the land, building, or structure according to all the other applicable regulations?

YES. We intend to extend only the "drip line" of the canopy further into the building setback. (25' setback from prop. line)

\* cont. → see attached page.

4. Would the literal interpretation of the provisions of the Code deprive the applicant of rights commonly enjoyed by other properties under the terms of this Code and work unnecessary and undue hardship on the applicant?

The literal interpretation of the Code would not allow the business owner to offer the safest possible fueling conditions, nor protect the public from dangerous weather.

5. Will the grant of the relief violate the general intent and purpose of this Code or policies of the Comprehensive Plan?

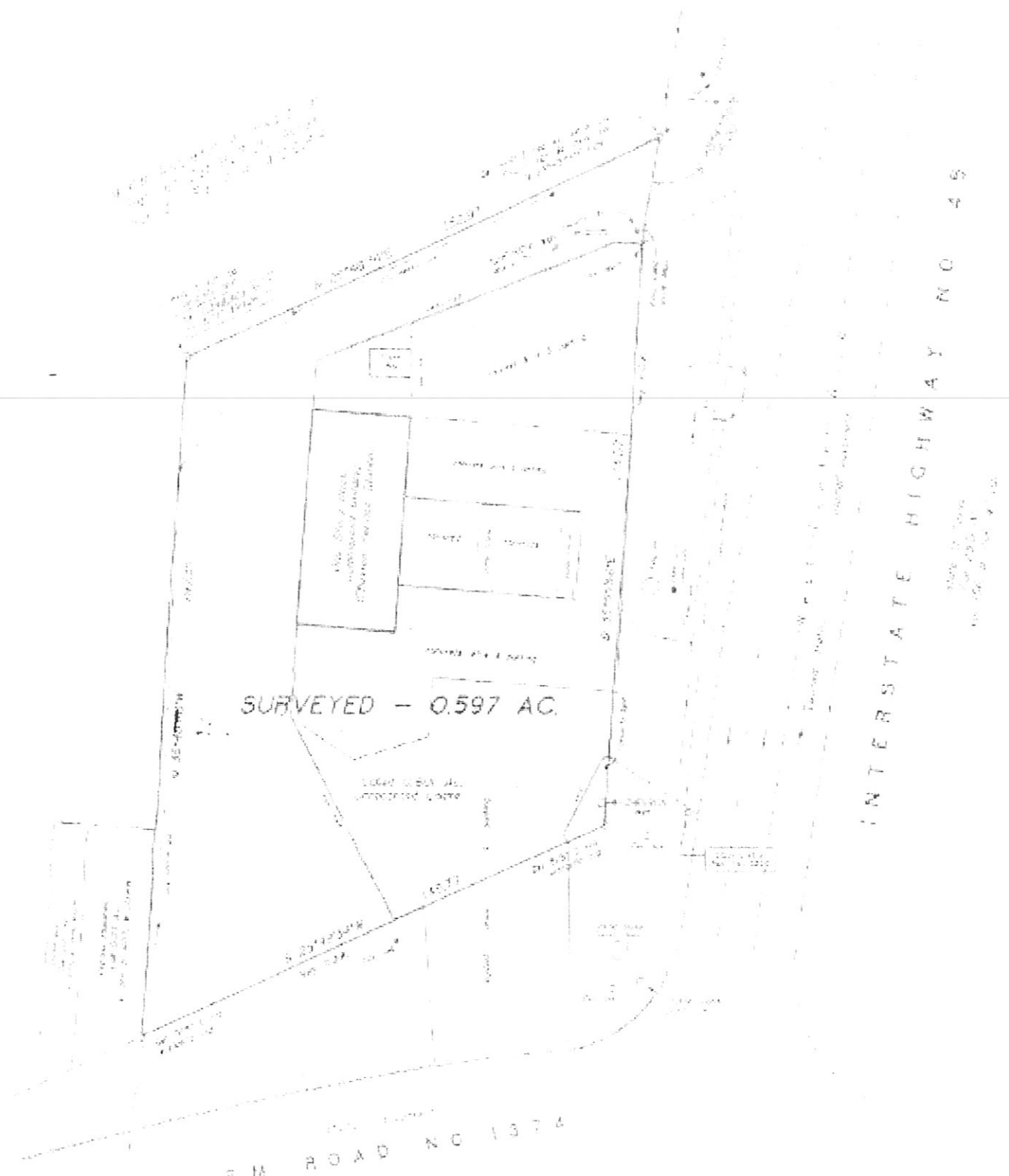
Being that this location is on the highway with direct feeder road entrances, we feel that we will not infringe on any other businesses nor the general public by extending the drip line.

6. Will the grant of relief create unsafe conditions or other detriments to the public welfare beyond the effects of development otherwise allowed?

NO. The grant of relief will create safer conditions for those public customers fueling up at this location.

#3. Cont.

The foundation footprint of the canopy will remain, however the canopy deck will extend an additional 5 feet out in order to protect the customer as they pump fuel into their cars. This will better protect the customer from lightning strikes, as well as slippage due to rainfall.



0.597 AC. LEASE TRACT OUT OF  
W M WOODWARD JR. ET AL PROPERTY

## Rose Kader

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**From:** Stephen Morris [steve@imageinstallations.com]  
**Sent:** Tuesday, May 11, 2010 4:03 PM  
**To:** Rose Kader  
**Subject:** FW: Emailing: SCAN0128  
**Attachments:** SCAN0128.jpg

-----Original Message-----

From: Stephen Morris [mailto:steve@imageinstallations.com]  
Sent: Tuesday, April 06, 2010 3:46 PM  
To: 'mroempke@huntsvilletx.gov'  
Subject: Emailing: SCAN0128

Mike,

Thanks for taking my call today and helping me get familiar with what you all like to see prior to us getting started in Huntsville.

Attached is the Plot Plan that we have for our Gas Station in Huntsville.  
(It is stamped by a professional surveyor, but the stamp is below the range of our copy machine...)

We will be detaching the canopy from the building and constructing a smaller sq. foot Texaco canopy in its place.

Please let me know what else we would need in order to expedite the permit process.

Thanks and Regards,

Stephen Morris  
Business Development  
Image Installations, Inc.  
(281)364-1155 w  
(281)222-1136 c  
(281)298-6121 f  
[www.imageinstallations.com](http://www.imageinstallations.com)

Your message is ready to be sent with the following file or link attachments:

SCAN0128

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.





\* NOTE: These data are to be used for graphical representation only. The accuracy is not to be taken; used as data produced for engineering purposes or by a Registered Professional Land Surveyor for the State of Texas. For this level of detail, supervision and certification of the produced data by a Registered Professional Land Surveyor for the State of Texas would have to be performed. The City of Huntsville assumes no responsibility for the accuracy of said data.



1 inch = 50 feet

Location: 563 I-45 South  
Meeting Date: May 21, 2010



Staff Photographs  
Location: 563 I-45 South  
ZBA Meeting Date: May 21, 2010



# 1994 Diamond Shamrock Case

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Board of Adjustments

September 22, 1994

isolated case because of unique circumstances and not a precedent setting case. Mr. Bounds felt that it was unique in that the City is, from Whiteco's standpoint, forcing the removal of the sign. Mr. Bounds suggested that there be a term limit to equal amount of the term that was placed on the sign agreement before its removal from the Gibbs' property.

Mr. Green suggested that it might be worthwhile to approve the variance with a time limit which would give the Planning and Zoning Commission and the City Council time to review the sign ordinance. Mr. Isbell said that a temporary permit could be issued with a note to review in twelve to eighteen months depending on the time limit and if the ordinance was changed Whiteco would simply have to pull a permanent permit. Mr. Green suggested a time limit of eighteen months.

Motion: To approve the variance request for sign placement with a time limit of eighteen months.

Motion by: Bill Green

Second: Thomas Leeper

Discussion: Thomas Leeper expressed concerns regarding the agreement with Gibbs Bros., and felt that it would be more appropriate given the unique situation for the variance, if granted, be tied to whatever the property rights were under the agreement. He felt that the temporary approval should be tied to the date of the Gibbs' Bros. agreement which was April or May. Mr. Leeper amended the motion.

Motion: To approve the variance request for sign placement with a temporary permit only to end of what would have been the end of the lease agreement. The date would be determined after referring to the agreement document.

Motion by: Thomas Leeper

Second: Don Coers

Vote: Unanimous

## VARIANCE FOR SETBACK BY DIAMOND SHAMROCK

Dan Dobrowski with Diamond Shamrock outlined the upgrading an existing station located on the corner of 14th Street and Sam Houston Avenue. The upgrading would include the removal of the old wooden canopy with a new metal canopy. The canopy would be similar to the one at the other Diamond Shamrock location on Sam Houston Avenue. Mr. Dobrowski noted that there were three things that had to be considered on a small piece of property, the dispensers, the tank placement and the canopy. He noted that the placement of the underground tank is a problem.

Mr. Coers expressed his concern over the amount of the variance requested which was 15' into the 25' setback, and the other was that this variance asked for an additional 5' to the 10' already



p2

Page 4  
Board of Adjustments  
September 22, 1994

in the setback. He felt that when businesses have to redesign that they usually bring their development into compliance with code, and that this was going the other way and the degree of the variance request. Mr. Isbell noted that it appeared that the lot was configured in the past with a 15' setback on Sam Houston and a 25' setback on 14th Street. He stated that the existing metal structure could be used with the wooden veneer replaced with metal veneer and be "grandfathered" under the code.

Discussion was stopped at this point in order to have a telephone conference with Scott Bounds regarding the Whiteco variance request.

Mr. Coers reopened discussion on the variance requested by Diamond Shamrock. Mr. Dobrowski noted that the company had demonstrated good faith in upgrading the existing structure. He noted that the building did not meet Diamond Shamrock standards with the wooden canopy. Mike Roempke noted that the fire code would not allow a wooden canopy now but the old structure was grandfathered. He noted that the Inspection Department had not required its removal but was glad that the company had elected to do so.

Mr. Isbell stated that the 10' already into the setback is grandfathered. Mr. Dobrowski stated that Diamond Shamrock would use the existing structure with the understanding that they would fortify the structure if needed.

Motion: To deny the variance for the an additional 5' for the placement of the canopy in the 25' setback.  
Motion by: Bill Green  
Second: Thomas Leeper  
Vote: Unanimous

#### REVIEW OF THE AUGUST 30, 1994 MINUTES

Motion: To approve the minutes of the August 30, 1994 meetings with amendments recommended by Don Coers.  
Motion by: Bill Green  
Second: Rick McFarland  
Vote: Unanimous

#### BUSINESS OF CHAIRMAN, BOARD AND STAFF

There being no further business to discuss, the meeting was adjourned.





**Diamond Shamrock**

City of Huntsville  
Public Works Department  
Community Development Division  
1212 Avenue M  
Huntsville, Texas 77340

AUGUST 26, 1994

RE: Diamond Shamrock Corner Store, 1328 Sam Houston Ave. at 14th St, Huntsville, Tx.

Dear Board of Adjustment Members,

This letter is a response to the six questions posed in the general handout on variance requests.

We are submitting a variance request to the building setback standards for your approval. The drawings we have attached will show that we are proposing to replace the original wooden canopy attached to the front of the existing store with a new free standing, fire resistant, metal canopy.

The current lot restrictions list a building line setback for non-residential lots as 25 feet. Our canopy has always extended beyond that point by approximately 10 feet which covered the pump dispensers leaving the customer out of the coverage area on the street side of the pumps. We are proposing that the new canopy extend an additional 5 feet beyond the limits of the original canopy so that it will afford protection to gas customers from the elements. This new canopy limits would cover about half of a car width rather than just the pumps as the old canopy did.

The existing canopy has recently been undergoing some accelerated deterioration and after recent rains, the safety of this structure became suspect. Our initial plan was to investigate damage and repair the canopy in place. But, due to rotting wood conditions we were forced to demolish the wood members of the structure to prevent a wholesale collapse of the deck. This deterioration is the result of natural aging and decay and does not result from any action of the owner.

We would like to take down the rest of the old metal frame and replace it with a new fire resistant structure. By replacing the canopy completely, we will have an increased fire resistive structure offering our customers and the public added safety. (The wooden cover did not meet the fire code while the new one will be in compliance.) This new canopy will afford the minimum degree of relief necessary to make possible the reasonable use of the land, building or structure in compliance with all other applicable regulations.

Without this variance being granted we will not be able to provide our customers with the same or even better degree of convenience and service that we are accustomed to providing elsewhere.

With the variance grant of relief there will not be any unsafe conditions or other detriments to the public welfare beyond the effects of development otherwise allowed. In fact, the conditions will be improved and City and citizens alike benefit from newer, attractive businesses located along Sam Houston Ave.

Additional factors we would like you to consider are that Diamond Shamrock can not relocate the pumps or canopy to a different area of the site. The only area available for the pumps would be to the south side of the building along the side street where the underground storage tanks are buried. Our image as a gas retailer is to provide easy ingress/egress to the property with the pump islands directly in front of the store. Additionally, it is not good practice or the policy of Diamond Shamrock to locate dispensers directly above the underground gasoline storage tanks for obvious reasons of congestion, safety and accessibility for maintenance.

Moreover, a canopy by nature of its design does not have walls and therefore does not obstruct the line of sight down a roadway at the setback line.

As a separate part of this effort but in no way affecting the setbacks in place, we will be using this opportunity to improve the remainder of the building to create a cohesive modern appearance. This is in keeping with a company wide program in progress to upgrade all units such as this one so that it conform to new image standards. As we show in the photos, the unit will be changed from its current appearance to one like that shown at our other Huntsville store.

We would like to take this opportunity to thank you for considering our variance request and should you have any comments or questions please don't hesitate to contact me at (713) 613-6614.

Sincerely,



Dan Dobrowski, Area Engineer  
Diamond Shamrock

cc: 0587file

25' BUILDING SETBACK

EXISTING WALL

EXISTING ADA RAMP

ETEBROW TO BE REMOVED

20" SQUARE COLISE

TO BE REPLACED

EXIST'G CANOPY 24.0' X 26.0'

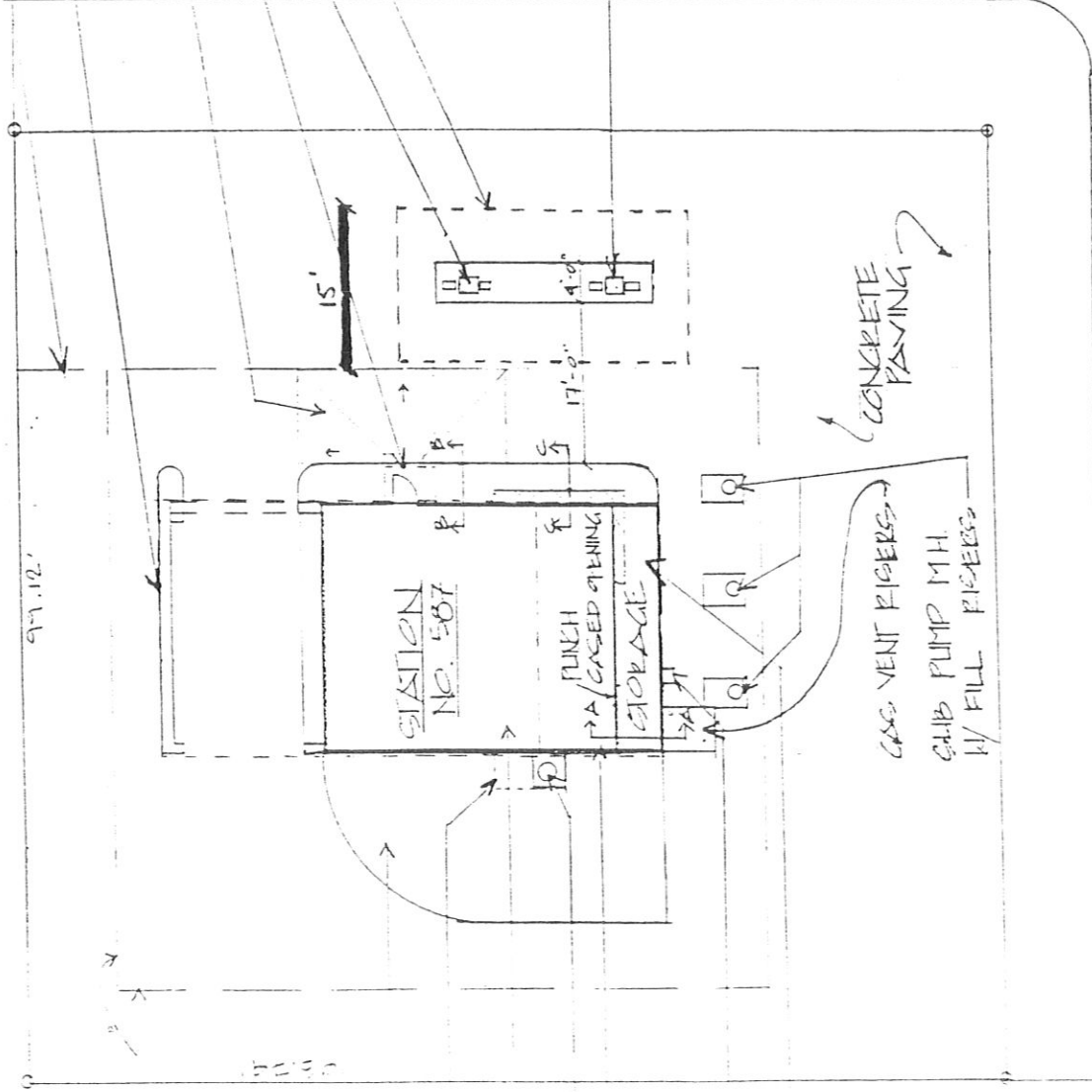
TO BE REMOVED

NEW CANOPY 30.0' X 15.0'

AIR & WATER AT COLUMN  
TO REMAIN

BRICK VENEER BELOW JUNCTION  
TO BE REMOVED

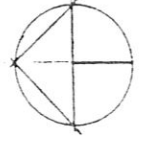
SAN JOSE ST



4TH STREET

SITE LAYOUT PLAN - proposed

SCALE 1" = 20.0'



25' BUILDING  
SETBACK

CLIP RAMP

CLIP RAMP

HIGH RAMP -  
ALL CONCRETE 14.0'  
ON CONCRETE 14.0'  
ON RAMP

METAL PHONE  
IN NEW LOCATION

METAL CURB  
ENCLOSURE  
UNDER EXIST'G  
PUMP



Unit #587  
1328 Sam Houston,  
Huntsville, Tx.



Unit #509  
2020 Sam Houston,  
Huntsville Tx



## ZONING BOARD OF ADJUSTMENT AGENDA ITEM DISCUSSION FORM

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Prepared by: Rose Kader  
Planner

Aron Kulhavy, A.I.C.P.  
Public Works Director/City Planner

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MEETING DATE: May 21, 2010

TYPE OF REVIEW: Setback Encroachment

SUBJECT: 1216 14<sup>th</sup> Street

REQUESTED BY: City of Huntsville

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### ***FACTS, CODE REQUIREMENTS AND CONDITIONS:***

A bond election was held in November 2009 to approve funding to expand the Huntsville Public Library located at 1216 14<sup>th</sup> Street. At the printing of this discussion form, the building plans are approximately 50% complete.

The current plans show the existing library structure (built in 1967) will remain in place, including the existing covered porte cochere along 14<sup>th</sup> Street. Both of the structures are considered to be grandfathered.

The existing Fire/EMS Station fronting Avenue M will be demolished to make way for the expansion of the Library. The Fire Station is currently four (4') feet from the property line along 14<sup>th</sup> Street and six (6') feet from the property line along Avenue M. The plans show the expansion will be further away from the property line but will still encroach into the required 25 foot setback. Along 14<sup>th</sup> Street, the expanded portion will be in-line with the current library structure, which is approximately 22 feet (excluding the porte cochere) from the property line. The expanded portion along Avenue M should be no more than 15 feet from the property line.

The property will need to undergo the standard subdivision process which will require the property to be platted into one lot and setback lines established. To make this project work as the plans indicate, a variance from the 25 side street setback is being asked to allow for the building lines to be platted at 15 feet along Avenue M and 20 feet along 14<sup>th</sup> Street and for the allowance of the encroachment of the porte cochere because some structural work will need to be preformed.

In order to grant this request, the *Development Code* states (Section 104.3.3) that all of the following criteria must be met (*staff comments in regards to each criterion follow in italics*):

- (a) **Special conditions and circumstances exist that are peculiar to the land, structure, or building involved and that are not applicable to other lands, structures, or buildings.**

*The property is surrounded by streets on three sides and is public property. The buildings have been in existence and operation well before the current Development Code was adopted.*

- (b) **The special conditions and circumstances do not result from the actions of the applicant, nor could the condition or circumstances be corrected or avoided by the applicant.**

*The existing library building has been in use for several years and is on a corner lot. To meet parking requirements and to use the existing building efficiently, this was the best design.*

- (c) **The relief granted is the minimum degree of relief necessary to make possible the reasonable use of the land, building, or structure according to all other applicable regulations.**

*In consideration of where the existing buildings are, the new construction will not surpass the distance of what has been in existence.*

- (d) **Literal interpretation of the provisions of the Code would deprive the applicant of rights commonly enjoyed by other properties under the terms of this Code and would work unnecessary and undue hardship on the applicant.**

*This statement is hard to address as this is a public facility. The applicant is doing their best to follow the Codes; however, the feasibility of changing the approved site plan this far into the process would result in undue hardship.*

- (e) **The grant of the relief will not violate the general intent and purpose of this Code nor policies of the Comprehensive Plan.**

*The above statement is correct. The Development Code's purpose is to implement the Comprehensive Plan. As one of the major goals listed in the Comprehensive Plan, the Huntsville Public Library is on the verge of attainment.*

- (f) **The grant of relief will not create unsafe conditions nor other detriments to the public welfare beyond the effects of development otherwise allowed.**

*The granting of the requested relief will not create an undue burden on the public safety or welfare. The proposed construction shows to increase site triangle visibility because the new addition will now be 22 feet instead of four (4') feet from the property line at the intersection of Avenue M and 14<sup>th</sup> Street.*

#### **STAFF RECOMMENDATION:**

*Being that this is a public facility that is attempting to follow the Codes in place and improving a vital public facility; staff recommends approval of the variance request for the building setbacks and encroachment of the porte cochere.*

#### **ATTACHMENTS:**

- Conceptual site plan
- Map of location/property

14-001  
S43726  
FIELD  
TIE-IN  
ON EXI  
FURNI  
PING

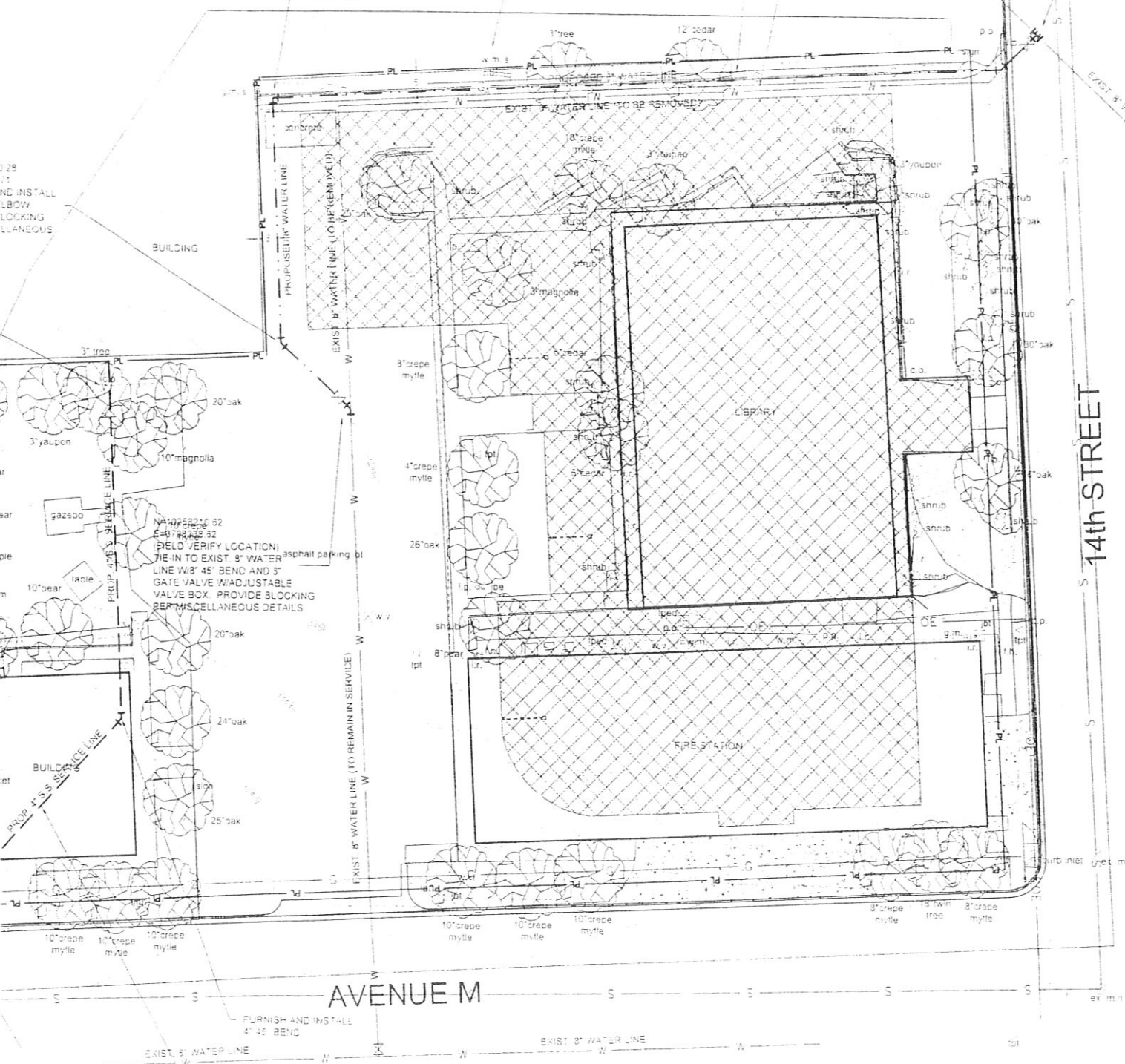
WARNING:  
ACTIVE GAS LINE IN CONSTRUCTION  
AREA - CONTACT OWNER 48 HOURS  
PRIOR TO EXCAVATION

CONTRACTOR SHALL RECONNECT  
EXISTING WATER METERS AFTER NEW  
WATER LINE HAS BEEN COMPLETED  
AND TESTED

REMOVE AND DISPOSE OF  
250 L.F. OF EXISTING 8"  
WATER LINE

N=10252033.04  
E=3755424.55  
FURNISH AND INSTALL  
3" x 1' 60" ELBOW PROVIDE  
BLOCKING PER MISCELLANEOUS  
DETAILS

28  
1  
ND INSTALL  
ELBOW  
BLOCKING  
MISCELLANEOUS



CITY AND BUILDING OWNER  
ALL WORK TO BE PERFORMED





\*NOTE: These data are to be used for graphical representation only. The accuracy is not to be taken/used as data produced for engineering purposes or by a Registered Professional Land Surveyor for the State of Texas. For this level of detail, supervision and certification of the produced data by a Registered Professional Land Surveyor or for the State of Texas would have to be performed. The City of Huntsville assumes no responsibility for the accuracy of said data.



Location: Huntsville Public Library - 1216 14th Street  
Meeting Date: May 21, 2010

1 inch = 60 feet



**MINUTES OF THE MEETING OF THE ZONING BOARD OF ADJUSTMENT HELD IN THE CONFERENCE ROOM, AT CITY HALL, 1212 AVENUE M, HUNTSVILLE, TEXAS ON THE 29TH DAY OF JANUARY 2010 AT 12:00 NOON.**

Members present: Bradley, Felder, Hannes, Phillips

Members absent: Grigsby, Kirk, Olsta

Staff present: Kader, Kulhavy, Roempke, Cross

**1. Call to Order**

*This meeting was called to order by Vice-Chairman Hannes. [12:03PM]*

**2. INTRODUCTION of new members**

Mr. Kirk was not present to be introduced.

**3. PUBLIC HEARING for the variance request by Casey Collum / DJW Partnership, applicant subject property located at 1548 11<sup>th</sup> Street, Suite 104, for a request to encroach into the building setback.**

City Planner Aron Kulhavy explained that there were only four (4) out of the five (5) members present; therefore, all four votes are needed to grant the variance request.

Casey Collum, applicant, stated he still wanted to proceed with only four members present. Mr. Collum handed out and described the site plan to the Board. He stated the adjacent property owner is in agreement with the encroachment and the area in between the two buildings and that it is not a public right-of-way.

Rose Kader, Planner, entered one comment received by staff:

- a. **Sam Dominey**, property owner within 200 feet of subject property, called in and explained to staff that he is not against the development; however, wanted to be sure all emergency service vehicles would be able to get into and through the alley.

**4. CONSIDER a variance request by Casey Collum / DJW Partnership, applicant subject property located at 1548 11<sup>th</sup> Street, Suite 104, for a request to encroach into the building setback.**

City Planner Kulhavy went over the provided staff report and emphasized that safety is a major concern. He stated if the variance is approved, there needs to be assurance of emergency access between the two buildings.

The Board discussed the requirement of a 20 foot Emergency Access Easement and talked with Mike Roempke, Chief Building Official, regarding Building Codes. Mr. Roempke stated that the Building Codes allows for buildings to be built up to the property line under certain construction standard; however, it's the Development Code that does not allow the encroachment.

Casey Collum explained the situation in which his prospective tenant, McKenzie's Barbeque, needed to move into this specific lease space. He also described the essential facilities needed

in the outdoor area to make this tenant's business function efficiently and safely, especially in the pit area.

*Dan Phillips made a motion to approve with appropriate conditions of a 20 foot Emergency Access Easement. Second was by John Bradley. The vote was unanimous.*

**5. CONSIDER the annual update to City Council.**

*John Bradley made a motion to accept the annual report to City Council. Second was by Vice-Chairman Hannes. The vote was unanimous.*

**6. CONSIDER minutes from the meeting of December 18, 2009.**

*Tina Felder made a motion to approve the minutes. Second was by Dan Phillips. The vote was unanimous.*

**7. ADJOURNMENT**

*John Bradley made a motion to adjourn. Second was by Dan Philips. The vote was unanimous.*